UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: Bk. No. 99-12287-JMD
Chapter 11

CGE Shattuck, LLC,
Debtor

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MEMORANDUM OPINION AND ORDER

I. BACKGROUND

Before the Court is a motion entitled "NCC's Motion To Reconsider Memorandum Opinion And Order Of April 24, 2000" (the "Motion"), filed by Banc of America Commercial Finance Corporation, f/k/a NationsCredit Commercial Corporation ("NCC"), on May 5, 2000. CGE Shattuck, LLC, (the "Debtor") filed an objection to the Motion on May 12, 2000. As its name suggests, the Motion requests that the Court reconsider its order of April 24, 2000 (the "Order"), which found the going-concern value of the Debtor's real property securing NCC's claim (the "Property") to be equal to $1,300,000. The Order was embodied in a memorandum opinion (the "Opinion"), which detailed the reasoning that underlaid the Order.

In reaching its final conclusion regarding value, the Opinion made a series of methodological and quantitative findings. First, the Court adopted a discounted cash flow analysis as the appropriate valuation

model, an analysis used by both parties' respective appraisers. Second, the Court made certain findings regarding the discounted cash flow model's inputs. That is, the Court made quantitative conclusions with respect to the necessary variables inherent in the discounted cash flow model. The Court made two such primary conclusions: (1) that a 12.75 percent discount rate is appropriate; and (2) that projected income and expenses would be based upon 17,000 rounds in year one, 17,500 rounds in year two, and 18,000 rounds in years three through five. Although the Court made certain other findings, they are largely irrelevant in the context of the Motion.

The Motion essentially argues that the Court's valuation of the Property was erroneous for two reasons: (1) the Court misconstrued the evidence regarding the Debtor's historical performance with respect to number of rounds played; and (2) the Court wrongly failed to give any weight to the sales comparison approach as employed by NCC's appraiser in reaching his valuation of the Property. The Debtor argues that NCC's assertions are misplaced and are merely an attempt to reopen the record for the purpose of introducing additional evidence and argument.

The Court has jurisdiction of this subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. DISCUSSION

A. The Legal Standard

Within this circuit, the standard governing motions to reconsider is often stated as follows: "[t]o succeed on a motion to reconsider, the Court requires that the moving party show newly discovered evidence or a manifest error of fact or law." Zeitler v. Zeitler (In re Zeitler), 221 B.R. 934, 936 n. 4 (1st Cir. B.A.P. 1998); In re Wedgestone Fin., 142 B.R. 7, 8 (Bankr. D. Mass. 1992). Moreover, "[a] motion for reconsideration is not a means by which parties can rehash previously made arguments." Wedgestone, 142 B.R. at 8. The following rationale has been provided for such a strict standard:

> [The court] . . . is required to review the evidence and the applicable law and to render a sound decision the first time that a matter is brought before it. The court does not have the luxury of treating its first decision as a dress rehearsal for the next time. The court is required to 'get it right' the first time. No less is expected of counsel. Initial arguments are not to be treated as a dress rehearsal for a second attempt to prevail on the same matter. Counsel is also expected to 'get it right' the first time and to present all the arguments which counsel believes support its position. Arguments which counsel did not present the first time or which counsel elects to hold in abeyance until the next time will not be considered. Arguments which were fully considered and rejected by the court the first time will not be considered when repeated by counsel the second time.

In re Armstrong Store Fixtures Corp. et al., 139 B.R. 347, 350 (Bankr. W.D. Penn. 1992). The question, therefore, is whether NCC has shown newly discovered evidence or a manifest error of fact or law so that the Order should be reconsidered.

B. NCC Has Failed to Present Evidence Warranting Reconsideration

As discussed above, NCC makes two arguments with respect to its request that the Court reconsider the Order: (1) the Court misconstrued the evidence regarding rounds played; and (2) the Court failed to attach appropriate weight to the sales comparison approach used by NCC's appraiser. These arguments shall be addressed in reverse order.

In valuing the Property, NCC's appraiser, Thomas W. Connery, used two different approaches: a discounted cash flow approach and a sales comparison approach. As the Opinion suggests, the Court attached little weight to Connery's sales comparison approach. This was not a result of the Court concluding that such an approach was of little credence, but instead flowed from Connery's own position that his use of the sales comparison approach was to merely confirm his discounted cash flow findings and was not meant to yield an independent conclusion regarding value. See Ex. 105, Real Estate Appraisal dated August 20, 1999, at 77 ("Although an independent value conclusion was not reached by [the sales comparison approach], economic indicators are supportive of the final value estimate."). The Court sees no reason to attach independent significance to the sales comparison approach when NCC's own expert witness opted not to do so. Moreover, as the Opinion makes clear, the Court, based on all of the evidence presented (which included the existence of the sales comparison approach as employed by Connery), concluded that the discounted cash flow analysis was the most appropriate model in valuing the Property.

NCC has not shown any newly discovered evidence indicating that the Court wrongly decided to give little weight to the sales comparison approach. In addition, NCC has failed to show that this decision was a manifest error of law or fact. Accordingly, the decision shall stand.

In reaching its decision regarding the Property's value, the Court stated:

> The Court believes that the proper level of play for the determination of value at this time is the level reasonably attainable by the Property in its current condition. The record shows that the Debtor achieved 18,000 rounds of play in its first year, 1996. The Court believes that after a transition year, the Debtor should be able to return to those levels within two years. Both appraisers testified to the strength of the market for golf in the northeast and there is no reason why the Debtor should not be able to achieve its past operating results. Accordingly, the Court will use 17,000 rounds in year one, 17,500 rounds in year two, and 18,000 rounds in years three through five in its valuation.

Opinion dated April 24, 2000, at 9. It is the last quoted sentence that NCC finds objectionable. NCC argues that the Court's projected round determination is based in part upon erroneous data presented by the Debtor's appraiser, Robert G. Bramley. In his 1999 appraisal, Bramley indicates that in 1997, the Debtor experienced approximately 17,000 rounds of play. See Ex. 106, Appraisal dated November 22, 1999, at 40. NCC points to Exhibit 149, which was presented during the various hearings on the instant matter, as the "smoking gun" in arguing that the Debtor experienced more than 17,000 rounds of play in 1997 and that therefore the Court was incorrect in using 17,000 as the projected number of rounds for year one in its valuation. Exhibit 149 is titled "The Shattuck Golf Course 1997 4th Quarter Operating Income Statement." The last page of Exhibit 149 contains a table titled "Shattuck Golf Club 18 Hole Rounds of Golf 1997." The table has three columns, which fall under the following three headings: Member, Non-Member, and Outing. After a monthly breakdown, each column has the following respective totals: 4,166, 14,858, and 2,251. NCC argues that the total rounds for 1997 equaled 21,275, as evidenced by the total of Exhibit 149's three columns and that Bramley's 17,000 figure reflects only Non-Member and Outing rounds.

Leslie Brown, a Vice President of NCC, testified that Exhibit 149 is a fourth quarter operating statement supplied to NCC by the Debtor in connection with the underlying loan at issue. See Transcript of December 7, 1999 Hearing, at 30 (hereinafter "Transcript"). Although Bramley testified that he never saw Exhibit 149 in preparing his appraisal, see Transcript at 128-29, Jeffrey Torrance, the assistant managing

member of the Debtor, testified that he also had never seen Exhibit 149. See Transcript at 206. Moreover, Torrance testified that Bramley was provided with accurate round information from daily reports prepared by the Debtor's golf professional. See id. at 206-07. In explaining the apparent discrepancy between Exhibit 149 and the 1997 rounds contained in Bramley's appraisal, Torrance testified that NCC often requested "hybrid" round reports and that Exhibit 149 likely reflects duplicative information. See id. More specifically, Torrance testified that the Outing column likely reflects rounds already included in the Non-Member column and that, therefore, merely adding the three columns would yield an inflated total rounds number. See id. at 173, 207.

The record reveals uncertainty regarding the total rounds played in 1997. Exhibit 149 appears to be an informal operating statement that can be interpreted in numerous ways. Exhibit 149 contains no description of how the three columns relate to one another and whether they reflect duplicative numbers. It is hardly a "smoking gun." The Court sees no reason to doubt that Bramley was provided with accurate numbers in preparing his appraisal. More importantly, NCC does not quite cross the logic synapse by arguing that the Court based its round projections solely on the rounds found in Bramley's appraisal. When making its determinations, the Court was indeed cognizant of the fact that all round estimates provided by the parties' appraisers were approximate in nature. Moreover, the Court was mindful of the uncertainty in the record regarding total historical rounds played. As the Opinion makes clear, the Court's determinations regarding round projections were based upon the record as a whole. Exhibit 149 was part of an uncertain and often conflicting record. The Court reached its conclusions based on all of the evidence presented. NCC has not offered the Court any newly discovered evidence. Moreover, NCC has failed to show that the Court has committed any errors of law or fact of a manifest nature. Indeed, it stands repeating that "[a]rguments which were fully considered and rejected by the court the first time will not be considered when repeated by counsel the second time." Armstrong, 139 B.R. at 350.

III. CONCLUSION AND ORDER

For the reasons set forth above, it is hereby ORDERED that the Motion is DENIED.

This opinion and order constitute the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DONE and ORDERED this 13th day of June, 2000, at Manchester, New Hampshire.

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J. Michael Deasy
Bankruptcy Judge